IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1107 OF 2001

Barkya Janya Gadaj & ors. ..Appellants

versus

Shantaram Jagannath Tare ..Respondent

Mr. N. D. Hombalkar for the Appellants.

Mr. S. Pathak for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH FEBRUARY,2005

ORAL ORDER :

1. Appellants were the original claimants who filed an application before Commissioner for Workmens Compensation and Judge, In charge of Fourth Labour Court, Thane, for claiming compensation of Rs.1 lac. It was the case of the claimants - appellants that one Shidva Barkya was employed by the respondent. He died when he was travelling to attend the place of employment. The job that he was going to do for the respondent was collecting sand from the river bed. On 26.11.1992 the deceased was travelling by tempo to join his duties when the tempo met with an accident and Shidva died. It is

in this background, claim petition came to be filed.

2. Commissioner for Workmens Compensation framed issues when the respondent opposed claim of the claimants on the ground that he had never employed the deceased, that the respondent was not doing business and/or work of extracting sand, that he was an agriculturist, that he has not entrusted any work of extracting sand to the deceased, and that the deceased was not travelling in any vehicle supplied by him i.e. Respondent. Issues were as under;

1. Whether the deceased was a workman within the meaning of Workmen’s Compensation Act, 1923?

2. Whether the death arose in the course of the employment of the deceased?

3. Whether the amount of compensation as claimed is due or any part thereof?

4. Whether the Opposite Party employer is liable to pay the compensation as claimed?

Thereafter parties led evidence but the Commissioner

gave finding on all the issues against the claimants and dismissed the claim petition. Therefore, this Appeal.

3. I heard counsel for the appellants and the respondent, at length. They took me through the evidence recorded and documents filed. Contention of the respondent was that, firstly, the claimants have failed to establish that deceased Shidva was employed by the respondent, that he was covered by the Workmens Compensation Act, that he was working for the Respondent on the date of the accident. According to the counsel for the respondent oral evidence adduced by the parties was not sufficient to prove any of the aforesaid factors and the Commissioner was therefore justified in dismissing the Claim petition. My attention was drawn by the counsel for the respondent to the evidence of the wife of the deceased wherein she has stated that Shidva was working for one Lahori Seth, that she does not know the name of the employer, that she could not prove her marital status or relationship with the deceased Shidva as a wife, and, therefore according to him if this was the oral evidence then the claim petition was rightly rejected. Secondly, according to him even if the claimants have examined two more witnesses the fact of employment of the deceased Shidva by the respondent, was not at all

proved and therefore no interference was called for.

4. All the submissions made by counsel for the Respondent denying the relationship of employer and employee, denying any concern or connection with the accident, and the oral submissions made by counsel for the respondent in that regard, should have been outright rejected by the Commissioner, in view of the reply given by the respondent to the notice which was issued on behalf of the claimants. This notice was for demanding compensation. It was addressed to and sent to the respondent. He gave reply to the same through Advocate Dighe. Though in his written statement and in his evidence he flatly refused to have given any such reply to the said notice. This defence of the respondent is totally false and bogus, nobody giving such a reply through Advocate can deny. When questioned the counsel for the respondent could not give any satisfactory reply as to why Advocate Dighe out of the blues and without being instructed or approached imagine about the notice being given by the claimants and give reply thereto. Counsel for the respondent tried to contend that there may be oblique motive on the part of the Advocate in giving such reply but the presumption is that the Advocate will not give reply unless he is instructed and authorised by his client. Nothing is brought on record to show that

Advocate Dighe was aware about this incident, aware about the relationship, aware of notice was being given by the claimants, and had no motive to falsify or implicate or bind the respondent, by giving reply.

5. Secondly according to the respondent, he had received the notice given by the claimants but he entrusted the matter to Advocate Tripathi. If that was so, then there is no explanation why Advocate Tripathi did not give any reply. Therefore, considering the conduct of the respondent, it is clear that his entire defence is false and bogus and is taken by him in order to save his skin and escape the liability under the Workmens' Compensation Act.

6. There is no substance in the contention of the counsel for the respondent that wife was unable to prove the relationship, none else in the world has come forward to claim compensation. Parties that is the deceased Shidva belonging to Waradi community which is most illiterate and most exploited community by shrewd businessmen like the respondent. Respondent did not keep record and now wants to take advantage of his own shortcomings by causing burden upon the claimants - appellants.

7. In reply notice given through Advocate Dighe

Respondent has admitted that Shidva was working with him, though he has tried to contend in the reply notice that Shidva left about 15 days before the accident. Once the relationship of employer and employee was admitted, then raising false pleas in the written statement and before the court clearly shows that the defences of the respondent are liable to be rejected. The Commissioner did not give any weightage to these facts and came to a perverse finding, resulting in dismissal of the claim petition.

8. Counsel for the respondent also contended that if wife is admitting that her husband was working with some Lahori Seth, then it was clear admission that Shidva was not working for the respondent. That single admission cannot come in the way of claimants in claiming compensation from the respondent and most important piece of evidence, that is sufficient to establish the claim in the reply notice, therefore I do not find any substance in any of the submissions made by the Counsel for the Respondent.

9. Counsel for the respondent also tried to reply upon the Judgment of the Supreme Court reported in **2002(94) FLR 658** wherein Supreme Court has laid down that it was for the claimants to prove

that the case will lie within the dominion of Workmens Compensation Act. There is no dispute about this proposition. Nobody can claim compensation unless he proves basic requirement. However, in the instant case the requirement stands proved by the admission of the respondent in the reply notice. No further evidence is required. It is a fact proved on record that Shidva died while he was going to his work in a vehicle provided by the respondent Therefore he was on duty he met with accident and died while on duty. Wife has stated that Shidva was giving Rs.500/- to Rs.600/- per month to her. This fact is corroborated by other witnesses. Therefore, this is a case where claimants prove all of their contentions and consequently the impugned order is liable to be quashed and set aside being perverse. I, therefore pass the following order:

ORDER

Appeal is allowed.

. Impugned order is quashed and set aside. Claim petition filed by the appellants is allowed. Respondent will pay Rs.1,00,000/- (Rupees One lac) to the appellants with interest at the rate of 9% per annum from the date of the accident till payment

and will also bear costs of this Appeal.

25.02.2005 (D.G. DESHPANDE, J.)